MISCELLANY.

The Custody of Children.—At Common Law the father is "the guardian by nature and for nurture" of his children until they reach the age of twenty-one, and he has the absolute right to their custody and to determine the nature of their education. But this strict doctrine has been considerably modified not only by statute, but also by the application in all cases of principles originally enforced only by the Court of Chancery in its capacity of protector of infants. The effect of the modern authorities is that the Court may, after consideration of all the circumstances in each particular case, refuse to hand over the custody of a child to the parent even when there is no suggestion of misconduct on his part, when it is satisfied that this course is in the best interests of the child (Regina *v.* Gyngall (1893)). It is therefore rather surprising that the Divisional Court should have felt itself bound last Tuesday to uphold an order of Mr. Justice Bucknill directing three Russian children, who had been living for some time with their grandfather and aunt in London, to be given up to their father, who was living in Lithuania. They applied the strict letter of the old common law against the wishes of the children and the dictates of humanity—and that on behalf of a person out of the jurisdiction about whose conduct they could have no reliable evidence. The circumstances were peculiar and touching. Some twenty years ago the mother of these children, a Jewess, then a girl of sixteen years, was abducted from her parents' house. Her father subsequently discovered that she was living with a Russian farmer, Minelga, who was the applicant in this case. Of this somewhat doubtful union six children were born, and on the death of the mother three of these children were, by the help of a Jewish society for the assistance of refugees, sent to London and taken care of by their relatives here. Recently, at the instigation, it was alleged, of Roman Catholic priests, the father claimed back his children, and gave a priest here power of attorney to recover them. It was sworn by the eldest child that she and her sister had been brought up as Jewesses, that they desired to remain in that faith, and that she was bitterly opposed to the father's wish that she should return to Russia and revert to the Roman Catholic Church. It has been repeatedly held that the Court will not interfere with the custody of a girl of sixteen against her consent (In re Agar-Ellis (1883), and though not definitely proved, it was alleged that the eldest girl had almost, if not quite, reached that age. The judges, however, refused even to examine the girl herself as to her own will in the matter, on the ground that to do so would be "depriving the father of his natural rights." But the Court has power to disregard the wishes of the father as to the children's religious education when there is some evidence that the father has abdicated his parental rights (In re

Newton (1896)). The judges, ignoring statements made by the dead mother of the children, held that no desertion by the father had been proved, and that the fact that he intended to bring them back to the Roman Catholic faith was not one which so prejudiced their welfare that he ought not to have their custody. That, doubtless, is correct according to the strict letter of the law; but, in view of the exceptional conditions of Jewish life in Russia, and seeing, too, that the Court will have lost all control over the children when once they are removed, and that anything may happen to them in Lithuania, we think this might have been treated as a case for the exercise of the beneficent parental powers of the judges, and we hope that an appeal to a higher Court may result in an employment of these powers.—London Law Journal.

Libel by Implication.—The field of litigation covered by the comprehensive title of "defamation" continues to grow, and there appear to be no limits to the ingenious devices by which litigants who have real or fancied grievances for which there is no certain legal remedy avail themselves of this form af action. So-called "libel" actions now occupy a wholly disproportionate place in the cause lists, to the detriment of many more substantial classes of litigation. The curious and not always defensible extension which is being given to defamatory actions of all sorts is illustrated by the case this week before Mr. Justice Darling, in which a head-master of a preparatory school was sued by one of the boys for the omission from his term report of any remark concerning the boy's conduct, the space provided for the report as to conduct being left blank. This, it was alleged, was a libel by implication. There are, of course, all sorts of indirect libels—the oblique, the interrogative, the conjectural, the ironical, the libel by parody, by hypothesis, and by antithesis—but there is no example in the books of a libel by mere omission, and we doubt very much if the claim could have been substantiated in the case if it had been fought out. In the interests not only of the teaching profession, but of all schoolboys and their parents, it would be lamentable indeed if a head-master were to be subject to the fear of a libel action in connection with every report which he either wrote or omitted to write; and if ever such a claim is brought up again it is to be hoped that it may be stopped *in limine* as not disclosing any good cause of action, or even as an abuse of the process of the Court. In the case in question there were other circumstances outside the blank report which militated against the discussion of the claim on the point of law, and the ultimate withdrawal of a juror by consent of the parties has deprived us of the opportunity of getting a much-needed authority as to the limits to be placed on so-called libel actions.—London Law Journal.